

Appeal from decision of the Utah State Office, Bureau of Land Management, requiring execution of no surface occupancy stipulation prior to issuance of oil and gas lease. U-39841.

Affirmed.

1. Environmental Quality: Generally -- Oil and Gas: Discretion to Lease
-- Oil and Gas: Stipulations -- Secretary of the Interior

The Bureau of Land Management, on behalf of the Secretary of the Interior, may condition issuance of a lease on the execution of a no surface occupancy stipulation where on appeal the record shows that the Bureau has adequately considered the factors involved and the stipulation is a reasonable means to accomplish proper Departmental purposes.

APPEARANCES: H. E. Shillander, pro se.

OPINION BY ADMINISTRATIVE JUDGE GOSS

H. E. Shillander appeals from the August 2, 1978, decision of the Utah State Office, Bureau of Land Management (BLM), requiring the execution of a no surface occupancy stipulation as a condition of acceptance of his noncompetitive oil and gas lease offer. The lease involves San Juan riverbanks in secs. 25, 29, 32, 33, 35, and 36, T. 41 S., R. 19 E., Salt Lake meridian, Utah. In its decision, BLM refers to "an oil and gas environmental analysis [that] has been prepared for lands administered by the Moab District Office, Bureau of Land Management." That office administers the lands for which appellant applied, but no more specific references

to the analysis were made. On appeal the Board requested and considered a copy of this Oil and Gas Environmental Analysis Report (EAR) (October 9, 1975, UT-06-6-2) for the lands administered by the Moab District Office, BLM, and the accompanying Management Framework Plan (MFP) No. 19 for the San Juan River corridor.

The State Office decision describes recreational and scenic attributes of this portion of the San Juan River. The decision also notes the presence of archeological and historic sites along the river, plus "potential to be included for study under the Wild and Scenic Rivers Act." Because of these factors, BLM determined not to authorize surface disturbance when granting a lease here.

In his statement of reasons, appellant disputes BLM's conclusion that drilling on this lease would necessarily degrade the river's appearance. He argues that his shallow target deposit would only require a 4-foot high pumping apparatus, which the 8-foot high riverbank shrubs would conceal. He claims that three existing riverbank wells are hidden from the river and even difficult to spot from the bluff above. He also claims that "along the river in the area of our interest," there exist no cultural or historic sites or cliff dwellings. He acknowledges the beauty of the area and says he contemplates nothing that would mar it. Appellant therefore requests full use of the lease.

[1] The Secretary of the Interior, through BLM, has the discretion to refuse to issue an oil and gas lease, despite the fact that the lands would otherwise be available for leasing. Udall v. Tallman, 380 U.S. 1, 4 (1965), rehearing denied, 380 U.S. 989 (1965); Cartridge Syndicate, 25 IBLA 57 (1976). BLM may condition the issuance of a lease on the execution of stipulations to protect land values. 43 CFR 3109.2-1. A no surface occupancy stipulation is a valid exercise of BLM's management authority regarding oil and gas leasing of the public lands. James M. Chudnow, 43 IBLA 375 (1979); Robert L. Healy, 35 IBLA 66, 72 (1978); Questa Petroleum Co., 33 IBLA 116 (1977). On appeal, such a stipulation will be upheld if the record shows the stipulation to be a reasonable means to accomplish proper Departmental purposes. Cartridge Syndicate, *supra*; A. A. McGregor, 18 IBLA 74 (1974).

The EAR on which the State Office relied substantiates the conclusion the State Office Reached. The EAR discusses various components of that portion of southeastern Utah bounded by the San Juan and Colorado Rivers. It describes oil and gas exploration, development and production and the present and potential effects of these on the environment. The EAR recommends no occupancy or other surface activity along the San Juan riverbanks (EAR at 337, 352, 363, 376). This is only one of several areas recommended for a no surface occupancy stipulation; less restrictive stipulations are recommended for many areas and no leasing is recommended for some.

Appellant argues that he would not disturb the highly aesthetic aspects of this area, however, he addresses only visual aspects. Visual impacts of pumping may well be mitigated, but other factors are involved as well. The EAR lists such factors as sedimentation and erosion from road building (EAR at 286, 340 and 289, 366), damage to stream bank and vegetation from construction of roads and drill pads (EAR at 308), increased road penetration into a scenic and archaeologically significant area (EAR at 349, 374), impacts of exploratory activities on archeological sites (EAR at 317-318, 347, 349), air quality (EAR at 282, 286, 327), and the dangers of oil spills (EAR at 273, 288, 303, 307, 324).

The Management Framework Plan for the river corridor of the south San Juan gave the following rationale for its recommendation of a no surface occupancy corridor up to 1/2 mile in width:

Recreational use of the San Juan River is increasing every year. In 1974, 1665 passenger days were reported on the San Juan above Mexican Hat. Through July 1975, 2291 passenger days were recorded. This river is very attractive to private boaters as there are no difficult rapids that require an expert knowledge of white water boating. This is an excellent river for those with limited experience in river running to learn on.

An added feature that is unique to the San Juan River is the wealth of cultural sites that are found adjacent to the river. Practically every type of archeological site found in the Four Corners Area is represented. The cliffs on the north side of the canyon contain one of the largest concentrations of petroglyph panels in the area. There are also several historic sites along the river. These include a portion of the Hole-in-the-Rock Trail, the ruins of a pioneer trading post and miners cabin.

The river has potential to be included for study under the Wild & Scenic Rivers Act.

It is proper to reject an oil and gas lease offer to protect a proposed wild and scenic river corridor. Rosita Trujillo, 21 IBLA 289 (1975); John Oakason, 19 IBLA 191 (1975). Oil and gas activities in such a corridor could preclude designation of a river that is proposed for designation under the Wild and Scenic Rivers Act, 16 U.S.C. §§ 1271-87 (1976). Dean Rowell, 37 IBLA 387 (1978). While the fact that the river here under consideration has "potential to be included for study under the Wild and Scenic Rivers Act," and such potential is a significant factor in the evaluation here, such a factor would not in itself ordinarily be conclusive as to the necessity for the stipulation.

BLM however, must consider all available information when it weighs conflicting uses of the public lands and determines the reasonableness of a stipulation. The record herein is substantial. Where, as here, appellant has not shown sufficient reason to change the result, the final decision will be upheld. Questa Petroleum, supra.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Joseph W. Goss
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Joan B. Thompson
Administrative Judge

